

**Statement of
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Before the

**Subcommittee on Public Lands and Forests
Committee on Energy and Natural Resources
United States Senate**

**on
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Concerning

**S. 2565 The Wild Sky Wilderness Act of 2002
S. 2587 Joint Federal and State Navigable Waters Commission for Alaska Act
S. 2612 Clark County Conservation of Public Land and Natural Resources
Act of 2002
S. 2652 Florida National Forest Land Management Act of 2002
S. Con. Res. 107 Sense of Congress on the Western Governors Association
"Collaborative 10-year Strategy for Reducing Wildland Fire Risks to
Communities and the Environment."**

Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you today. I am Abigail Kimbell, Associate Deputy Chief for National Forest System, Forest Service. I am here today to provide the Administration's comments on four bills and a concurrent resolution:

S. 2565—to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River Valley of the State of Washington by designating certain Federal lands as wilderness, and for other purposes.

S. 2587—to establish the Joint Federal and State Navigable Waters Commission for Alaska.

S. 2612—to establish wilderness areas, promote conservation, improve public land, and provide for high quality development in Clark County, Nevada, and for other purposes.

S. 2652—to authorize the Secretary of Agriculture to sell or exchange certain land in the State of Florida, and for other purposes.

S. Con. Res. 107—expressing the sense of Congress that Federal land management agencies should fully support the Western Governors Association “Collaborative 10-year Strategy for Reducing Wildland Fire Risks to Communities and the Environment”, as signed August 2001, to reduce the overabundance of forest fuels that place national resources at high risk of catastrophic wildfire, and prepare a National Prescribed Fire Strategy that minimizes risks of escape.

The Department supports S. 2652 and S. Con. Res. 107 and does not object to S. 2565, S. 2587 or S. 2612. The Department would like to work with the Committee to recommend improvements to S. 2565, S. 2587 and S. 2612.

S. 2565—The Wild Sky Wilderness Act of 2002

The Department does not oppose S. 2565 designating the Wild Sky Wilderness on the Mount Baker-Snoqualmie National Forest in the State of Washington as a component of the National Wilderness Preservation System. However, the Department would like to work with the Committee to improve S. 2565.

This legislation would create approximately 106,000 acres of additional wilderness on the Skykomish Ranger District of the Mt. Baker-Snoqualmie National Forest. It directs the Secretary to assure adequate access to private in-holdings within the Wild Sky Wilderness and establish a hiking trail plan. The bill authorizes the use of helicopter access to construct and maintain a Forest Service communication repeater site to provide improved communication for safety and health purposes.

S. 2565 also requires the Secretary to exchange specified lands with the Chelan County Public Utility District if the District offers to the Secretary approximately 371.8 acres within the Snoqualmie National Forest, in exchange for a permanent easement, including helicopter access, consistent with such levels of use as of the date of this Act's enactment, to maintain an existing Snotel site on 1.82 acres on the Wenatchee National Forest.

If Chelan County notifies the Secretary that they no longer need to maintain the Snotel site, the easement will be extinguished and all rights conveyed by this exchange would revert to the United States.

The Department has significant concerns with approximately ^{21,000}~~36,000~~ acres of the 106,000 acres proposed for wilderness designation. These acres would not be considered suitable for wilderness designation under the provisions of the 1964 Wilderness Act or under existing Forest Service regulations and planning direction. It may be that some other backcountry designation would be more suitable for these acres.

Within the proposed wilderness in S. 2565, there are lands that could meet the 1964 Wilderness Act goals for preservation and protection of lands in their natural condition. To that end, the Department would like to work with the Committee to make a few adjustments. The lands that would help meet the goals of the Wilderness Act, approximately ^{25,000}~~70-75,000~~ acres, consist of all of the Eagle Rock Roadless Area and portions of Glacier Peak A, B, K, and L. These areas retain their undeveloped character and are largely without permanent improvements or human habitation. Limiting the wilderness designation to these lands would address many of the Department's concerns.

The areas we propose for exclusion from wilderness designation and an alternative backcountry designation include low elevation forests that have been utilized for timber harvest and mining over the last 80 years, still showing visible evidence of railroad logging and mining activities. The areas also include approximately 35 miles of existing roads, some of which are all weather, drivable, and graveled. Several of the roads receive high levels of visitor use associated with recreation opportunities. (The Rapid River Road is such a travel way and we recommend its exclusion from wilderness designation.) The types of recreation experiences enjoyed by users along the Rapid River Road corridor include driving for pleasure, nature photography, fishing, picnicking and dispersed camping at a number of pull-off sites along the road. (In the winter snowmobiles utilize this road as a part of the snowmobile trail system, traveling to its end point.)

Another concern lies with roads outside and adjacent to the proposed wilderness boundary that have narrow corridors subject to landslide. This situation poses significant public safety and resource management issues, as the close proximity of the proposed boundary could result in constraints related to necessary repairs and road reconstruction work. We would like to work with the Committee on more appropriate boundaries.

(We propose the exclusion of the area encompassing approximately 2,426 acres of private fee patented mining claims and private timberlands.) We also would suggest excluding the Evergreen Mountain Lookout, a widely used recreation rental cabin, from the proposed wilderness in order to continue offering this developed recreation opportunity to visitors.

A boundary adjustment would also accommodate a likely future expansion of the existing Bonneville Power Administration's (BPA) right of way. (S. 2565 includes a 200-foot wilderness boundary setback from the edge of the BPA power line right-of-way.) While the proposed wilderness boundary follows the power line right-of-way for only 1.5 miles, the boundary is too close to allow for additional power lines which would be required in the likely event that

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increased power capacity is needed for the greater Seattle area. This concern could be eliminated if the wilderness boundary was offset a minimum of 500 feet uphill from the existing right-of-way.

(Further, Lake Isabel has substantial floatplane use and we would like to work with the committee to clarify intent regarding this use.)

The Department is supportive of the administrative provisions in the bill, particularly provisions for a repeater site in order to provide improved communications for safety and health purposes. The Department is also supportive of the provisions for land exchange in the Glacier Peak Wilderness and provisions for management of the existing Snotel site in that wilderness.

S. 2587—Joint Federal and State Navigable Waters Commission for Alaska Act

The purposes of the bill are threefold: (1) to expedite the process of quieting title to the submerged lands in the State of Alaska; (2) to facilitate determinations of which bodies of water in Alaska are navigable and which are not navigable; and (3) to recommend to both the Federal and State governments ways to improve the process for water use and navigability decision making.

The bill would establish a joint Commission composed of senior executives representing the highest levels of both Federal and State governments. Representatives of the President of the United States and the Governor of the State of Alaska would serve as co-chairpersons of the commission.

The Commission would make recommendations to the Secretary of the Interior and the State of Alaska regarding navigability determinations. The Commission would also focus on developing procedures to include private landowners, Native Corporations and the general public in the process. The Commission would have two years to complete its task and would then be terminated.

The issue of navigability is central to the ownership of submerged lands. Generally, title to lands underlying a navigable body of water passed to the state upon its admission to the Union, unless those lands were retained as part of a Federal reservation. Navigability is based on a factual determination as to whether the waterway was used, in the customary modes of trade and travel on water, as a highway for commerce as of the date of the States' admission to the Union.

The enactment of S. 2587 could have value in expediting determinations of navigability on fresh water rivers, lakes and streams in Alaska by establishing the Commission to help provide factual information to be considered in these determinations. However, the courts have generally rejected formula approaches to navigability determinations, opting instead to inquire into the facts of each case. The Department is concerned that the proposed Commission, during its short, two-year duration might not be capable of effectively conducting the necessary historical research to determine the factual underpinnings of navigability for thousands of waterways in remote areas of Alaska.

We are also concerned about the effect of the recommendations submitted by the Commission, and whether the courts would accept those recommendations. It is not clear that the Commission, however constituted, can achieve the bill's purposes of expediting the title adjudication processes and facilitating navigability determinations.

We have an additional concern regarding the composition of the Commission. As the bill is currently written, the Commission is composed of members who each represent an interested party. There is no requirement for any member to have expertise in any aspect of law or land management that would facilitate determinations. We believe the Committee should consider adding expertise as criteria for some of the Commission members.

In addition, OMB advises that the bill has pay-as-you-go implications because of the Commission compensation provision. An estimate has not yet been developed.

The Department is not opposed to the purpose of the bill, but would welcome the opportunity to work with the committee to address these issues so that determinations of navigability could be expedited for Alaskan waterways.

S. 2612 Clark County Conservation of Public Land and Natural Resources Act of 2002

S. 2612 is made up of several titles, only a few of which concern the Forest Service directly. Therefore, I will limit my comments to Title II and Title IV. These titles designate specified Federal lands in Nevada as wilderness and components of the National Wilderness Preservation System. S. 2612 also releases and retains certain Nevada lands as wilderness study areas.

Title II proposes a number of areas in Clark County as additions to the National Wilderness Preservation System, and several related administrative and management requirements and limitations. Although the Department does not oppose Title II and is supportive of the proposed additions to the National Wilderness Preservation System, we have significant concerns with some of the administrative and management provisions as they are currently drafted. We look forward to working with the Committee to resolve these concerns.

The Nevada Wilderness Protection Act of 1989 provided for low-level over-flights in designated wilderness for military purposes only. The language of the section 205 in the current bill allows for low-level flights by anyone. We would like to work with the Committee to resolve this difference.

As a general matter applicable to three of the proposed additions to the National Wilderness Preservation System, the Forest Service is concerned with our ability to administer wilderness boundaries that follow private property lines and un-surveyed cadastral (i.e., township) lines. The resulting wilderness would be more effectively managed if, where possible, recognizable landscape features and elevation contour lines defined the boundaries.

In most cases, private property boundaries and cadastral lines were defined in the last century and have not been surveyed. For example, the western boundary of the proposed La Madre Wilderness appears to follow the section lines.

Revising that boundary to follow topographic features would make it easier to both establish and administer on the ground. The Forest Service also recommends assuring that this portion of the boundary is sufficiently offset from FSR 576 and the private inholding to guard against any potential conflict with those features. Also, where boundaries use offsets from man-made structures, such as roads or power lines, these offsets should be adequate to allow for road and fuel break maintenance, as well as dispersed parking where appropriate. We would like to discuss our specific boundary concerns with the Committee and staff before the bill moves forward.

Additionally, we have a number of substantive and technical concerns regarding sections 208-210 and would like to work with the Committee to modify these sections.

Title IV of the bill contains amendments to the Southern Nevada Public Land Management Act (SNPLMA), specifying that a maximum of 25 percent of the amounts be used for capital improvements and a minimum of 25 percent be used for parks, trails, and natural areas. These legislated restrictions are problematic. We recommend maintaining flexibility in the proportions allocated to land acquisitions, capital improvements, and parks, trails, and natural areas to allow those three program areas to adjust to the variations in needs and priorities that naturally occur from year to year. The process currently described in the SNPLMA Implementation Agreement permits important flexibility. The Implementation Agreement process allows public participation throughout the nomination process to help set the priorities for distribution of funds. The latest round of project submittals exemplified how the current flexibility was used to distribute funds to the mutual advantage of all participating agencies and, ultimately, to the public. Therefore, we recommend that the Implementation Agreement process be used to develop the annual recommendations for SNPLMA project funding.

S. 2652—Florida National Forest Land Management Act of 2002

S. 2652 would authorize the Secretary of Agriculture to solicit offers for the sale or exchange of 18 parcels of land within the National Forests in Florida.

S. 2652 authorizes the Secretary to use a real estate broker and pay the real estate broker a commission in an amount that is comparable to the amounts of commission generally paid for real estate transactions in the area.

The bill allows the Secretary to accept a cash equalization payment in excess of 25 percent of the value of the Federal land exchanged for non-Federal land of a lesser value.

S. 2652 also prohibits the Secretary of Agriculture from selling or exchanging the parcel of land described in paragraphs (1) through (7) of subsection (b) without the concurrence of the Secretary of the Air Force. The Department has concerns with this provision and believes it could significantly delay disposing of the specified parcels. We would like to work with the Committee to revise the concurrence language.

Further, we would recommend that parcel 17 (tract C-2212) be removed from the bill. The 5 acres does not belong to the Forest Service.

The Department supports S. 2652. The parcels contained in the bill are also identified for exchange or sale in the National Forests in Florida's Land Management Plan. This legislation

will expedite the sale of these parcels, which are separated and isolated lands that no longer contain national forest characteristics and are no longer manageable as National Forest land. Several of these parcels are encumbered with urban structures, such as baseball fields and the Okaloosa County fairgrounds.

S. 2652 will allow us to acquire the remainder of a 2,560-acre inholding within Florida's Apalachicola National Forest. We recently completed a land exchange for 1,180 acres of this property.

S. Con. Res. 107—Sense of Congress on the "Collaborative 10-year Strategy for Reducing Wildland Fire Risks to Communities and the Environment."

Senate Concurrent Resolution 107 expresses the sense of Congress that Federal land management agencies should fully support the 10-Year Comprehensive Strategy for Reducing Wildfire Risks to Communities and the Environment. This strategy was developed by the Secretaries of Agriculture and the Interior in collaboration with the Western Governors Association. The Secretaries and the Governors endorsed this document in August 2001.

Subsequently, in May of this year, the Secretaries and Governors signed the implementation plan for the 10-Year strategy. This plan is a consensus document agreed to by the Secretaries, the Western and Southern Governors Associations, the National Association of Counties, the National Association of State Foresters, industry, environmental groups, and other parties. The goals of the implementation plan are to improve fire suppression, reduce hazardous fuels, restore fire adapted ecosystems, and promote community assistance through performance based collaboration. The implementation plan establishes the need for active forest management, including thinning that produces commercial or pre-commercial products, biomass removal and utilization of prescribed fire and other tools to reduce wildland fire risks to communities and the environment.

The newly formed Wildland Leadership Council is important to the leadership, accountability, and coordination in carrying out these goals. The Council has developed action plans for each task described in the 10-Year Implementation Plan. We appreciate the continued bipartisan support from Congress, and we are committed to meeting the goals of this federal-state partnership.

Conclusion:

This concludes my statement. We look forward to working with the Committee on making the suggested modifications as noted above, and I would be happy to answer your questions.